

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2081 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/- and

MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

BHAVNAGAR DISTRICT PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

MR KH BAXI for Petitioners
Mr.K.C.SHAH, A.G.P. for the State - resp.No.1
Respondent No.2 - served.

CORAM : MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

Date of decision: 19/01/2000

ORAL JUDGEMENT

1. This is an Appeal by the three appellants filed against the Judgment and Decree dated 4.3.1997 passed by the learned Civil Judge(SD), Bhavnagar, dismissing the Special Civil Suit No.28 of 1996 on the ground of limitation. Copy of the plaint has been filed along with

Memo of Appeal which shows that the Special Civil Suit was filed by the State of Gujarat, Bhavnagar District Panchayat, Executive Engineer, Irrigation Department and District Panchayat against Kalubhai Bhavanibhai, who happened to be respondent No.2 in this Appeal.

2. The impugned Judgment and order shows that the Suit was dismissed only on the ground of limitation. The order itself shows that it is a specimen of non-application of mind. There is mention about some Tribunal and it is mentioned in the second line that the trial Judge was considering the Decree passed by some Tribunal which is patently absurd observation. No such allegation has been made in the plaint. Thereafter the trial Court observed that Article 112 will not apply. Probably it meant by this that Article 112 of the Limitation Act will not apply. He further observed that because the learned A.G.P. had nothing to submit more hence the Suit was dismissed on ground of limitation. It is also vaguely observed that the cause of action accrued either in 1982 or in 1988. There is no finding as to when the cause of action initially accrued and when the cause of action accrued last. Cause of action consists of bundle of facts on which a party gets right to file Suit claiming certain relief. Since it has not been observed by the trial Court as to when the cause of action accrued last it can again be said without any fear of contradiction that for this is also the result of non-application of mind. Casual observation that cause of action accrued either in 1982 or in 1988 is equally the result of non-application of mind. In Para : 6 of the copy of plaint it is clearly mentioned that the cause of action first accrued on 28.7.1981 and lastly on 28.1.1988. If cause of action accrued lastly on 28.1.1988 there seems no reason why Article 112 of the Limitation Act could not be attracted. The Suit was filed on 11.2.1996. Article 112 of the Limitation Act provides that"inter-alia when any Suit, except the Suit before Supreme Court in exercise of its original jurisdiction by or on behalf of State Government is filed the period of limitation will be 30 years when the period of limitation would begin to run under this Act against the like suit by a private person". These provisions have not been considered by the trial Judge. It is also not clear whether any preliminary issue of limitation was framed which was decided through the impugned order, nor it is mentioned that any application was moved by the defendant - respondent No.2, raising the plea of limitation which was answered and the Suit was dismissed.

3. For the reasons stated above, the impugned

Judgment and order cannot be sustained. The result is that the Appeal succeeds and is hereby allowed. The Judgment and Decree under Appeal are hereby set aside. Special Civil Suit No.28 of 1996 is remanded to the Civil Judge (SD), Bhavnagar, who shall admit it to its original number and shall decide the issue of limitation, if already framed, in accordance with law. If this issue involves leading of evidence from the side of the parties it need not be decided as preliminary issue and shall be dealt with along with other issue. No order as to costs.

sd/-

(D. C. Srivastava, J.)

Date : January 19, 2000 sd/-

(H. K. Rathod, J.)

sas